MONTANA LEGISLATIVE HISTORY

Chapter 304 1991

Bill H 938 S _____ Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) h 2/22 ___C

v 2/22 ___C

_____ ___C

_____ ___C

Date Out _____ ___C

S. Committee on Judiciary

Hearing Date(s) h 3/14 ___C

v 3/14 ___C

_____ ___C

_____ ___C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

HB 938 INTRODUCED BY R. JOHNSON

EMERGENCY MEDICAL SERVICES PERSONAL LIABILITY REVISION

BY REQUEST OF DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

2/19	INTRODUCED		
2/19	REFERRED TO JUDICIARY		
2/19	FIRST READING		
2/22	HEARING		
2/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/26	2ND READING PASSED	94	4
2/27	3RD READING PASSED	97	2
	TRANSMITTED TO SENATE		
2/27	REFERRED TO JUDICIARY		
3/04	FIRST READING		
3/14	HEARING		
3/14	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/16	2ND READING CONCURRED	49	0
3/18	3RD READING CONCURRED	49	0
	RETURNED TO HOUSE WITH AMENDMENTS		
3/21	2ND READING AMENDMENTS CONCURRED	99	1
3/23	3RD READING AMENDMENTS CONCURRED	99	0
3/27	SIGNED BY SPEAKER		
3/27	SIGNED BY PRESIDENT		
3/27	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 304	EFFECTIVE DATE: 4/01/91	

HB 939 INTRODUCED BY S. RICE, ET AL.

URBAN REFORESTATION GRANT PROGRAM

2/19	INTRODUCED
2/19	REFERRED TO LOCAL GOVERNMENT
2/19	FIRST READING
2/21	FISCAL NOTE REQUESTED
2/23	FISCAL NOTE RECEIVED
2/25	FISCAL NOTE PRINTED
3/07	HEARING
3/12	COMMITTEE REPORT—BILL PASSED
3/14	REREFERRED TO APPROPRIATIONS
3/20	HEARING
3/23	TABLED IN COMMITTEE

HB 940 INTRODUCED BY WANZENRIED, ET AL.

PROVIDE RELIABLE CASH FLOW TO SCHOOL DISTRICTS THROUGH STATE REVENUE ADVANCE

BY REQUEST OF OFFICE OF PUBLIC INSTRUCTION

2/19	INTRODUCED		
2/19	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/19	FIRST READING		
2/19	FISCAL NOTE REQUESTED		
2/25	FISCAL NOTE RECEIVED		
2/26	FISCAL NOTE PRINTED		
3/08	FISCAL NOTE PRINTED		
3/12	HEARING		
3/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/28	2ND READING PASSED	55	44
3/28	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
3/28	3RD READING PASSED	56	43
	TRANSMITTED TO SENATE		
3/28	FIRST READING		

INTRODUCED BY House BILL NO. 938

BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE LIABILITY PROTECTION FOR PHYSICIANS SERVING AS OFF-LINE MEDICAL DIRECTORS FOR EMERGENCY MEDICAL SERVICES, TO PHYSICIANS AND NURSES WHO GIVE MEDICAL INSTRUCTIONS TO MEMBERS OF EMERGENCY MEDICAL SERVICES, AND TO MEMBERS OF EMERGENCY MEDICAL SERVICES WHO FOLLOW THOSE INSTRUCTIONS; DEFINING THE TERM "OFF-LINE MEDICAL DIRECTOR"; AMENDING SECTION 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-6-302, MCA, is amended to read:

"**50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients. The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the United States. The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration, that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

LC 1176/01

INTRODUCED BILL
HB 938

(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel.

~~(8)~~(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

~~(9)~~(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

NEW SECTION. **Section 2.** Liability protection. (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An off-line medical director is not liable for civil damages for an injury resulting from the performance of his duties, except damages for an injury resulting from the gross negligence of the director.

(3) A member of an emergency medical service who renders emergency care according to instructions given the member by a physician or registered nurse licensed under the laws of this state is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the member, if the member is performing in a manner consistent with his level of certification, licensure, or training and the instructions given to the member are consistent with the protocols and the medical control plan approved by the department.

NEW SECTION. **Section 3.** Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, part 3, apply to [section 2].

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BILL STRIZICH**, on February 22, 1991, at 7:15 A.M.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HB 920

Motion: REP. DARKO MOVED HB 920 DO PASS.

Discussion:

REP. DARKO explained Montana will be under sanction from the Federal government if legislation to amend the statutes of limitations is not passed. The penalty will be one to six percent of AFDC money from the Federal government. The bill removes the limitations of three years from the birth of child or two years from the date of first application for services from the Department to prove paternity. The time has been extended so that paternity can be established at any time prior to the

Questions From Committee Members:

REP. TOOLE asked specifics regarding prohibition of the legislature acting in this area? **Jacqueline Terrell** cited Article VII, Section 2, which sets out the Supreme Court's jurisdiction constitutionally. Also, Section 3-2-701, Montana Codes, generally describes the Supreme Court's jurisdiction, and specifically states that the Supreme Court has jurisdiction over practice and procedure. Rule 1 in the Rules of Civil Procedure provides that the Supreme Court has jurisdiction over practice and procedure in lawsuits.

REP. TOOLE said this bill sets guidelines without attempting to flatly refute a discovery that exceed the guidelines. Would Mr. Sullivan speak to the hypothetical ordinary case and state whether or not you think these guidelines will do. **John Sullivan** replied the guidelines are unreasonable because they set numerical limits on questions asked and how long depositions may be. Many times in a deposition questions are not answered, then the witness may ask for a break to talk to his attorney, and a four hour limit on depositions will encourage that problem. Judges hate discovery fights. This bill is going to drive District Court judges crazy because they will have to referee discovery suits. Every time the four hour limit is exceeded, the judge will be contacted to extend the limit. If a deposition is getting too long, lawyers are getting abusive, the remedy is to get the District Judge to intercede. That will increase the amount of time a judge has to spend on a case.

Closing by Sponsor:

REP. WHALEN stated the purpose of discovery is to flush out your case. It is the plaintiff's lawyer who has the burden of proving his case. All this bill does is put the burden on the person who wants to enter into judgments to justify it in advance. It is a matter of fairness to all parties.

EXECUTIVE ACTION ON HB 834

Motion/Vote: REP. SPRING MOVED HB 834 BE TABLED. Motion carried unanimously.

HEARING ON HB 938

Presentation and Opening Statement by Sponsor:

REP. ROYAL JOHNSON, House District 88, Billings, presented HB 938, a bill regarding emergency medical personnel. Emergency medical services are provided by people well trained in their business. There are also limitations which are created by persons at the other end of the emergency system trying to give the proper instructions on what personnel ought to be doing.

Proponents' Testimony:

Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences, expressed support of HB 938 and presented written testimony. **EXHIBIT 10**

John Delano, Montana Medical Association, is in favor of HB 938.

R. Mark Zandhuisen, President, Montana Emergency Medical Services Association, presented written testimony. **EXHIBIT 11**

Opponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, opposes this bill. This bill protects not only volunteers, but every hospital in the state of Montana and every EMS provider, in spite of the fact persons are being paid for their time and experience. Who should pay for the social costs of injuries and lost wages when someone gets hurt? If someone does something wrong it should not be the victim who bears that cost. Emergency workers do operate under adverse conditions and if there is negligence which results in a lawsuit, the jury would be instructed that all conditions should be taken into account in determining if there was carelessness involved in causing injury to the person involved. This is a business wanting to be treated different than any other business in the state. It is special interest legislation and poor public policy because EMS persons are asking for approval not to insure.

Questions From Committee Members:

REP. BOHARSKI asked if EMTs, MTIs and nurses go through the medical malpractice law. **Michael Sherwood** said these people work for medical health providers and any claim for negligence requires that the claim for negligence be screened through the medical malpractice panel.

Closing by Sponsor:

REP. JOHNSON commented that the new section 2 on page 3 attempts to directly exempt the physicians or registered nurses who might be called on in an emergency to help and give advice to people who are out in the field. Line 23 and 24 states, except damages for injury resulting from gross negligence of the physician or nurse. Rep. Johnson would not want everyone to be exempt and not liable for anything. If a person is ever in an emergency situation of a serious accident, and a responder comes to that accident and in spite of all his training has some doubt, he can contact someone by radio for instructions. If the person on the other end knows he will be liable, it is difficult for them to respond.

REP. MEASURE has witnessed firings in industry to save management money. Retirement system vested rights are adjusted. Rep. Measure endorses the bill.

Vote: Motion that HB 851 do pass failed.

Motion/Vote: REP. BOHARSKI MOVED HB 851 BE TABLED. Motion failed 10 to 10 by roll call vote. **EXHIBIT 18**

EXECUTIVE ACTION ON HB 938

Motion: REP. JOHNSON MOVED HB 938 DO PASS.
REP. JOHNSON moved to amend HB 938.

Discussion:

REP. JOHNSON said the amendments before you were a compromise. The primary problem is in the rural area, and the amendments take care of that.

Vote: Motion to amend carried.

Motion/Vote: REP. DARKO MADE A SUBSTITUTE MOTION THAT HB 938 DO PASS AS AMENDED. Motion carried with Reps. Whalen, Wyatt, Russell, Becker, Boharski and Measure voting no.

EXECUTIVE ACTION ON HB 898

Motion: REP. MESSMORE MOVED HB 898 DO PASS.

Discussion:

REP. BROWN wondered if the bottom line is to try and spread the cost away from the state fund to county funds? **REP. MESSMORE** said hopefully it is still a state fund. **REP. BROWN** said is care the reason for the bill? **REP. MESSMORE** replied care, community based services and use of community resources. **REP. BROWN** said if that's the basis, there was some pretty strong testimony on the opposite side, not only from the hospital but from Mike McGrath who has good instincts in these matters. With that on top of what is currently going on with the Warm Springs campus, Rep. Brown doesn't see the need for the bill and will vote no.

REP. JOHNSON supports the bill. There is a need to be able to evaluate those persons in local communities with trained individuals. It is a waste to send someone from Billings to Warm Springs for evaluation to be sent back to Billings for evaluation again. That is not true in every city in the state, but money is in the state budget for that. It will come from the Commerce Department.

REP. MEASURE asked Rep Messmore how many psychiatrists or psychologists are in communities other than Great Falls and Billings? **REP. MESSMORE** said the Warm Springs psychologist

3:10
2-23-91
HDR

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Mr. Speaker: We, the committee on Judiciary report that House Bill 938 (first reading copy -- white) do pass as amended .

Signed: _____
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 8.
Strike: ","
Insert: "AND"

2. Title, lines 10 and 11.
Strike: ", AND" on line 10 through "INSTRUCTIONS" on line 11

3. Page 3, line 6.
Following: "personnel."
Insert: "The term does not include a physician who volunteers his services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000."

4. Page 3, line 21.
Following: "service"
Insert: "without compensation or for compensation not exceeding $5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward"

5. Page 4, lines 11 through 21.
Strike: subsection (3) in its entirety

EXHIBIT 10
DATE 2-22-91
HB 938

HOUSE BILL 938

Mr. Chairman, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

Pre-hospital EMS providers render emergency care under very adverse circumstances ... poor weather, poor lighting, and rowdy crowds. Physicians and nurses give the EMTs and paramedics orders, by radio, under the most urgent conditions - without the benefit of their own patient examination, or the patient's old chart.

Physician supervision of pre-hospital emergency medical services is essential to assure the appropriateness and quality of care. Physician medical directors are required for all pre-hospital ***advanced life support services***. Basic life support emergency medical services are encouraged, but not required, to have a medical director.

However, emergency medical services often have a difficult time finding a physician to serve as their medical director. Assuming the responsibility for the medical direction of pre-hospital care providers increases the physician's liability. Some malpractice carriers do not cover these physicians. In Montana, a majority of the EMS medical directors are not compensated for their time.

This legislation is intended to encourage physicians to become more involved with the supervision of pre-hospital emergency care. It provides liability protection to:

1. Physicians and nurses who give instructions to pre-hospital EMS personnel.

2. The off-line medical director...that physician who generally supervises an emergency medical service, reviews their care rendered, makes recommendations for improvement, and is responsible for the care administered.

3. The pre-hospital emergency personnel who follow the direction of a physician or nurses.

Several facts should be emphasized:

1. The individuals must be operating within their scope of practice and within their approved protocols and medical control plan. They are not provided liability protection for acts they are not legally authorized to perform.

2. Whether physicians, nurses, or EMTs, they are still responsible and accountable, under their own licensure laws, for the care they render.

3. They are still liable for gross negligence.

I would appreciate your support of this bill. It will greatly assist local emergency medical services in obtaining appropriate medical direction.

Montana Emergency Medical Services Association

P.O. Box 30336
Billings, MT 59107
(800) 247-2369

EXHIBIT 11
DATE 2-22-91
HB 938

Ran 31-X
By 8:00 AM

DATE: February 21, 1991

TO: House Judiciary Committee
Bill Strizich, Chair

SUBJECT: Testimony Concerning HB938

Please verbally enter the following into the House Judiciary Committee hearing concerning HB938.

The Montana Emergency Medical Services Association Inc. (MEMSA) is the professional organization of Emergency Medical Technicians (EMTB,D,I,P) in our state. Membership is voluntary and consists of over 800 members. The majority are associated with rural volunteer emergency medical service (EMS) organizations.

We support Senator Johnson in the introduction of HB938, a bill that we feel supports emergency medical services (EMS) and will be beneficial to the quality and availability of care provided.

Montana, being a rural, sparsely populated state, depends on volunteer emergency medical services organizations to assure that EMS is available when needed. The voluntary participation of physicians and nurses contributes directly to the quality and level of care that the system can provide. This bill by providing limited liability protection to the physicians, nurses and EMS providers will have a positive impact on the recruitment and retention of members for the EMS team, thus providing for the growth and improvement of EMS in our state. MEMSA, by a unanimous vote of the House of Delegates, strongly supports this bill and urges you as a committee to give it a "DO PASS" recommendation.

Thank you for consideration of this issue.

Sincerely;

R. Mark Zandhuisen
President

Gary R. Haigh
Legislative Committee

MONTANA EMS SYSTEM
EMERGENCY MEDICAL SERVICES

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on March 14, 1991, at 10:05 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that Vice Chairman Yellowtail would act in his place during hearings this date.

HEARING ON HOUSE BILL 653

Presentation and Opening Statement by Sponsor:

Representative Tim Whalen, District 93, commented that although the Committee has heard and passed out HB 154 on legislative immunity, he sees a need to pass HB 653 and to make significant changes in Senator Nathe's bill. He cited Noni Linder's problem with the Missoula County Health Department, and said the approach needs to be more broad rather than more specific.

Representative Whalen said the idea of the bill is to get the Legislature back in control, where it should be, according to the Montana Constitution. He stated the Legislature needs to erase the board and to start over.

Representative Whalen told the Committee that, in the past two years, the Montana Supreme Court has interpreted statute on

HEARING ON HOUSE BILL 938

Presentation and Opening Statement by Sponsor:

Representative Royal Johnson, District 88, said HB 938 takes care of extremely serious situations, particularly in small communities, where 911 emergency people are the first to respond to accidents. He explained that the bill provides immunity for people on the other end of the phone when the emergency medical technician calls for instructions.

Representative Johnson proposed amending page 2, line 6, by striking "the term does not include a physician" , and inserting "the term includes a physician". He also referred to page 4, line 18 and said people involved in emergency situations are covered under other sections.

Proponents' Testimony:

Drew Dawson, Chief, Emergency Medical Services Bureau, Department of Health and Environmental Services, read from prepared testimony in support of the bill (Exhibit #5).

Mike Sherwood, Montana Trial Lawyers Association, advised the Committee that there are two other medical immunity bills in the House. He stated that upon review of HB 938 he found it to be good public policy, and reached agreement so that he now stands as a proponent. Mr. Sherwood told the Committee the bill is consistent with the Good Samaritan law.

Jerry Loendorf, Montana Medical Association, stated his support of the bill. He said emergency medical service teams need medical direction.

Jim Ahrens, President, Montana Hospital Association, stated his support of the bill.

Opponents' Testimony:

There were no opponents of HB 938.

Questions from Committee Members:

Chairman Pinsoneault asked what the $5,000 in the bill is for. He commented that the Good Samaritan law says $3,000 or 25 percent of annual earnings. Representative Johnson replied he thought maybe $3,000 was too low.

Closing by Sponsor:

Representative Johnson asked that Senator Franklin carry the bill.

EXECUTIVE ACTION ON HOUSE BILL 938

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Doherty made a motion that Representative Johnson's proposed amendments to HB 938 be approved. The motion carried unanimously.

Recommendation and Vote:

Senator Doherty made a motion that HB 938 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ADJOURNMENT

Adjournment At: 12:25 p.m.

Senator Dick Pinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

SENATE STANDING COMMITTEE REPORT

March 14, 1991

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration House Bill No. 938 (third reading copy -- blue), respectfully report that House Bill No. 938 be amended and as so amended be concurred in.

1. Page 3, lines 6 and 7.
Following: "TERM" on line 6
Strike: "DOES NOT INCLUDE"
Insert: "includes only"

Signed: _____
Richard Pinsoneault, Chairman

3-14-91
Amd. Coord.

3-14 1:05
Sec. of Senate

14 Mar 91
HB 938
Exhibit #5

HOUSE BILL 938

Mr. Chairman, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

Pre-hospital EMS providers render emergency care under very adverse circumstances ... poor weather, poor lighting, and rowdy crowds. Physicians and nurses give the EMTs and paramedics orders, by radio, under the most urgent conditions - without the benefit of their own patient examination, or the patient's old chart.

Physician supervision of pre-hospital emergency medical services is essential to assure the appropriateness and quality of care. Physician medical directors are required for all pre-hospital ***advanced life support services***. Basic life support emergency medical services are encouraged, but not required, to have a medical director.

However, emergency medical services often have a difficult time finding a physician to serve as their medical director. Assuming the responsibility for the medical direction of pre-hospital care providers increases the physician's liability. Some malpractice carriers do not cover these physicians. In Montana, a majority of the EMS medical directors are not compensated for their time.

This legislation is intended to encourage physicians to become more involved with the supervision of pre-hospital emergency care. It provides liability protection to:

1. Physicians and nurses who give instructions to pre-hospital EMS personnel providing they do this without compensation, or the total compensation they receive for these services does not exceed $5,000 in a twelve month period.

2. The off-line medical director...that physician who generally supervises an emergency medical service, reviews their care rendered, makes recommendations for improvement, and is responsible for the care administered with the same limitations on income derived from serving as off-line medical director.

Several facts should be emphasized:

1. The individuals must be operating within their scope of practice and within their approved protocols and medical control plan. They are not provided liability protection for acts they are not legally authorized to perform.

2. They are still liable for gross negligence.

3. This applies primarily to physicians and nurses who volunteer their services, or who earn very little compensation from providing medical advice.

I would appreciate your support of this bill. It will greatly assist local emergency medical services in obtaining appropriate medical direction.

HB 938
3-14-91

Deaconess
Medical
Center

February 21, 1991

The Honorable William Strizich
Chairman, Judiciary Committee
Montana House of Representatives
Capitol Building
Helena, MT 59620

Dear Mr. Chairman:

I am writing to you in support of House Bill #938. The passage of this bill will encourage and support physicians practicing in Montana rural health systems to take an active, necessary role in directing emergency medical services (EMS).

As manager of an emergency medical system (DEACARE), I frequently encounter rural EMS providers who want to provide quality patient care, but who need the assistance of a physician. HB #938 would allow rural physicians to assist in this vital area.

Please give due consideration to this piece of legislation.

Thank you.

Sincerely,

Joyce Mavity, RN, BSN, CEN
DEACARE Manager
Advanced Life Support Services

JM/ed

Deaconess
Medical Center
of Billings, Inc.

Broadway at
Ninth Avenue North
P.O. Box 37000
Billings, Montana 59107

Telephone 406-657-4000

HB 938

3-14-91

Thomas Bell, D.O., F.A.C.E.P.
2801 SIXTH STREET N.W.
GREAT FALLS, MONTANA 59404
TELEPHONE: (406) 452-5948

March 12, 1991

TO: Dick Pinsoneault, Chairman (D)

FROM: Thomas Bell, D.O., F.A.C.E.P.
Medical Director, Northwest Bicsak Ambulance

Dear Sir:

I'm writing to give you my support for Bill #938 giving immunity status to EMS Medical Directors. As Montana becomes more and more involved with Advanced pre-hospital care, physicians will have to become involved in training and supervision of these systems. While some of the large systems may be able to encourage physicians with token reimbursement, most rural communities can not. I believe by encouraging physicians with immunity as Directors more communities throughout the state can become involved in Advanced pre-hospital care. I believe everyone comes out ahead.

Better pre-hospital care throughout the state, for the patient and encouragement and protection for the physicians involved.

Thomas Bell

HB 756
3-14-91

Deaconess Emergency Physicians

1145 North 29th, Suite 1B ▪ Billings, Montana 59101 ▪ (406) 248-6203

March 13, 1991

The Honorable R. J. Pinsoneault
Montana Senate
Capitol Station
Helena, MT 59620

Dear Senator Pinsoneault:

I am writing in support of HB 88 .

Due primarily to the low population density of Montana, EMS systems in this state have been slow to develop. Growth in the larger populated areas is now starting to occur, however in more rural areas, where there are fewer physicians, this bill will help provide incentive for involvement in local EMS systems, stimulating their growth. In larger areas where trained emergency physicians are practicing, most of the medical direction is provided by these physicians on a voluntary basis, which is a direct benefit to their local communities.

I feel that this bill will directly promote development of quality EMS systems in Montana.

Sincerely,

Michael S. Bush, M.D., FACEP
DEACARE Medical Director
Advanced Life Support Service

MSB/ed

HB 938
3-14-91

Montana Emergency Medical Services Association

P.O. Box 30336
Billings, MT 59107
(800) 247-2369

DATE: March 13, 1991

TO: Senate Judiciary Committee
Dick Pinsoneault, Chair

SUBJECT: Testimony Concerning HB938

Please verbally enter the following into the Senate Judiciary Committee hearing concerning HB938.

The Montana Emergency Medical Services Association Inc. (MEMSA) is the professional organization of Emergency Medical Technicians (EMTB,D,I,P) in our state. Membership is voluntary and consists of over 800 members. The majority are associated with rural volunteer emergency medical service (EMS) organizations.

We support Senator Johnson in the introduction of HB938, a bill that we feel supports emergency medical services (EMS) and will be beneficial to the quality and availability of care provided.

Montana, being a rural, sparsely populated state, depends on volunteer emergency medical services organizations to assure that EMS is available when needed. The voluntary participation of physicians and nurses contributes directly to the quality and level of care that the system can provide. This bill by providing limited liability protection to the physicians, nurses and EMS providers will have a positive impact on the recruitment and retention of members for the EMS team, thus providing for the growth and improvement of EMS in our state. MEMSA, by a unanimous vote of the House of Delegates, strongly supports this bill and urges you as a committee to give it a "DO PASS" recommendation.

Thank you for consideration of this issue.

Sincerely;

R. Mark Zandhuisen
President

Gary R. Haigh
Legislative Committee

HOUSE BILL NO. 938

INTRODUCED BY R. JOHNSON

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE LIABILITY PROTECTION FOR PHYSICIANS SERVING AS OFF-LINE MEDICAL DIRECTORS FOR EMERGENCY MEDICAL SERVICES, AND TO PHYSICIANS AND NURSES WHO GIVE MEDICAL INSTRUCTIONS TO MEMBERS OF EMERGENCY MEDICAL SERVICES~~,--AND--TO--MEMBERS--OF--EMERGENCY MEDICAL SERVICES WHO FOLLOW THOSE INSTRUCTIONS~~; DEFINING THE TERM "OFF-LINE MEDICAL DIRECTOR"; AMENDING SECTION 50-6-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-6-302, MCA, is amended to read:

"**50-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients. The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the United States. The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration, that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

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(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. THE TERM ~~DOES--NOT INCLUDE~~ INCLUDES ONLY A PHYSICIAN WHO VOLUNTEERS HIS SERVICES AS AN OFF-LINE MEDICAL DIRECTOR OR WHOSE TOTAL REIMBURSEMENT FOR THOSE SERVICES IN ANY 12-MONTH PERIOD DOES NOT EXCEED $5,000.

~~(8)~~(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

~~(9)~~(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States."

NEW SECTION. **Section 2.** **Liability protection.** (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service WITHOUT COMPENSATION

OR FOR COMPENSATION NOT EXCEEDING $5,000 IN ANY 12-MONTH PERIOD AND WHOSE PROFESSIONAL PRACTICE IS NOT PRIMARILY IN AN EMERGENCY OR TRAUMA ROOM OR WARD is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An off-line medical director is not liable for civil damages for an injury resulting from the performance of his duties, except damages for an injury resulting from the gross negligence of the director.

~~(3)--A--member--of--an--emergency--medical--service--who renders-emergency-care-according-to-instructions--given--the member-by-a-physician-or-registered-nurse-licensed-under-the laws--of--this--state-is-not-liable-for-civil-damages-for-an injury-resulting-from-the-instructions,-except--damages--for an-injury-resulting-from-the-gross-negligence-of-the-member, if--the-member-is-performing-in-a-manner-consistent-with-his level-of--certification,--licensure,--or--training--and--the~~

~~instructions given to the member are consistent with the protocols and the medical control plan approved by the department.~~

NEW SECTION. **Section 3.** Codification instruction. [Section 2] is intended to be codified as an integral part of Title 50, chapter 6, part 3, and the provisions of Title 50, chapter 6, part 3, apply to [section 2].

NEW SECTION. **Section 4.** Effective date. [This act] is effective on passage and approval.

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